

# HOUSE BILL 153

C2  
HB 77/09 – ECM

1lr1503

---

By: **Delegates W. Miller and Rudolph**  
Introduced and read first time: January 26, 2011  
Assigned to: Economic Matters

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Motor Fuel – Below-Cost Sales – Enforcement**

3 FOR the purpose of allowing a retail gasoline dealer against whom a certain complaint  
4 is filed alleging a violation of the below-cost sales law to produce certain  
5 documents relating to the complaint within a certain time period; providing for  
6 the imposition of certain sanctions in a certain manner, including a civil  
7 penalty; making a stylistic change; and generally relating to the sale of motor  
8 fuel below cost.

9 BY repealing and reenacting, without amendments,  
10 Article – Business Regulation  
11 Section 10–301 and 10–316  
12 Annotated Code of Maryland  
13 (2010 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Business Regulation  
16 Section 10–304.1  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume and 2010 Supplement)

19 BY repealing and reenacting, without amendments,  
20 Article – Commercial Law  
21 Section 11–402  
22 Annotated Code of Maryland  
23 (2005 Replacement Volume and 2010 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Business Regulation**

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 10–301.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) “Below cost” means a price that is less than the total of:

4 (1) the most recently published average reseller rack cost of motor fuel  
5 by grade and quality, as calculated by the Oil Price Information Service (OPIS), for the  
6 particular terminal from which the motor fuel was delivered to the retail service  
7 station dealer, or the actual invoice cost from the supplier of the product, whichever is  
8 lower; and

9 (2) the freight charges and all applicable federal, State, and local taxes  
10 not included in the invoice cost.

11 (c) (1) “Dealer” means a person who:

12 (i) imports any gasoline into the State;

13 (ii) blends, in the State, any gasoline on which the motor fuel  
14 tax has not been paid;

15 (iii) refines, in the State, any gasoline on which the motor fuel  
16 tax has not been paid; or

17 (iv) acquires, in the State, any gasoline on which the motor fuel  
18 tax has not been paid, for:

19 1. export; or

20 2. wholesale distribution.

21 (2) “Dealer” includes:

22 (i) the State when it engages in any activities listed in  
23 paragraph (1) of this subsection; and

24 (ii) a political subdivision of the State when it engages in any of  
25 the activities listed in paragraph (1) of this subsection.

26 (3) “Dealer” does not include a person who brings gasoline into the  
27 State in the fuel supply tank of an aircraft, motor vehicle, or vessel.

28 (d) “Manufacturer” means a person who in the State blends gasoline from  
29 blend stocks before final sale.

1 (e) "Special fuel seller" has the meaning stated in § 9-301(s) of the Tax –  
2 General Article.

3 10-304.1.

4 (a) Except as provided in subsection (b) of this section, a retail service station  
5 dealer may not sell motor fuel below cost.

6 (b) A retail service station dealer may sell motor fuel below cost if the sale is:

7 (1) made in good faith to meet competition;

8 (2) made as part of a final liquidation or closing of the business of the  
9 retail service station dealer;

10 (3) made as part of a bona fide charitable promotion lasting no longer  
11 than 2 days; or

12 (4) made under the direction or order of a court or government entity.

13 (c) (1) If the Comptroller receives a complaint in writing that a retail  
14 service station dealer is selling motor fuel below cost, the Comptroller shall investigate  
15 and determine within 3 business days [of the] AFTER receipt of the complaint whether  
16 the allegations contained in the complaint are true.

17 (2) (I) THE DEALER SHALL HAVE 3 BUSINESS DAYS AFTER  
18 NOTIFICATION OF INVESTIGATION BY THE COMPTROLLER TO PRODUCE  
19 DOCUMENTATION AS TO THE COST TO THE DEALER OF THE MOTOR FUEL  
20 ALLEGEDLY SOLD OR OFFERED IN VIOLATION OF THIS SECTION, WHETHER OR  
21 NOT THE COMPTROLLER ISSUES A STOP SALE NOTICE FOR THE ALLEGED  
22 VIOLATION.

23 (II) NOTHING IN THIS PARAGRAPH MAY BE CONSTRUED TO  
24 PREVENT THE COMPTROLLER FROM ORDERING THE DEALER TO ALTER THE  
25 SALE PRICE TO A LEVEL THAT IS NOT BELOW COST PENDING THE OUTCOME OF  
26 THE INVESTIGATION.

27 (3) IF AFTER INVESTIGATION THE COMPTROLLER DETERMINES  
28 THAT THE DEALER IS IN VIOLATION OF THIS SECTION, THE COMPTROLLER  
29 SHALL ORDER THE DEALER TO PAY AS A CIVIL PENALTY THE PRODUCT OF:

30 (I) THE VOLUME OF THE MOTOR FUEL SOLD BY THE  
31 DEALER DURING THE PERIOD OF THE VIOLATION; AND

32 (II) THE DIFFERENCE BETWEEN:

1                                   **1. THE BELOW-COST THRESHOLD PRICE**  
 2 **CALCULATED UNDER § 10-301(B) OF THIS SUBTITLE; AND**

3                                   **2. THE LOWER OF THE POSTED PRICE AND THE**  
 4 **ACTUAL OFFERING PRICE OF THE MOTOR FUEL.**

5                                   **(4) THE CIVIL PENALTY SHALL BE PAID TO THE COMPTROLLER**  
 6 **AND DEPOSITED IN THE GENERAL FUND OF THE STATE.**

7                                   **(5) THE COMPTROLLER MAY IMPOSE ANY OTHER APPLICABLE**  
 8 **PENALTY AS OF THE DATE OF THE VIOLATION OR THE DATE OF THE**  
 9 **DETERMINATION.**

10                   (d) The Comptroller shall issue a stop sale notice and may suspend or revoke  
 11 the certificate of registration of a retail service station dealer if the Comptroller  
 12 determines that the retail service station dealer is in violation of this section.

13 10-316.

14                   The Comptroller shall issue a stop sale notice if the Comptroller finds that a  
 15 person:

16                   (1) stores or sells motor fuel from a location that does not have a valid  
 17 certificate of registration;

18                   (2) willfully uses a motor fuel advertisement that is misleading;

19                   (3) willfully markets motor fuel that has not been approved; or

20                   (4) sells motor fuel below cost in violation of § 10-304.1 of this  
 21 subtitle.

## 22                                   **Article – Commercial Law**

23 11-402.

24                   This subtitle does not apply to an advertisement, offer to sell, retail sale, or  
 25 wholesale sale, if the merchandise:

26                   (1) Is sold in a bona fide clearance sale and is so advertised and  
 27 marked;

28                   (2) Must be sold promptly in order to prevent loss;

29                   (3) Is imperfect, damaged, or being discontinued and is so advertised  
 30 and marked;

- 1           (4)    Is sold on the final liquidation of a business;
- 2           (5)    Is sold for charitable purposes or to relief agencies;
- 3           (6)    Is sold on contract to a department of a government or  
4 governmental institution;
- 5           (7)    Is sold by an officer acting under the order or direction of a court;
- 6           (8)    Is sold at a price set in good faith to meet competition; or
- 7           (9)    Is motor fuel sold by a retail service station dealer.

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2011.